

The Election Center

National Association of Election Officials

12543 Westella, Suite 100 Houston, TX 77077 281-293-0101 FAX: 281-293-0453 or 293-8739

WEBSITE: www.electioncenter.org EMAIL: services@electioncenter.org

Contact: Doug Lewis, 713-516-2875, cell FOR IMMEDIATE RELEASE

Statement by R. Doug Lewis, Executive Director,
Election Center (National Association of Election Officials)

We are told the US House of Representatives will pass HR811 on Thursday, September 6, which affects American elections. It is the most irresponsible election legislation to pass any US House in our lifetime. If this was a simple bill to require a paper trail with voting machines, we would work with Congress to make it possible – but the legislation goes far beyond that.

The legislation is so bad that if it has any chance of passage as a law, then it is time for the Federal government to run its own elections.

I am not talking about local election officials running two separate elections, one for the Federal government and one for state and local government. I am recommending state and local governments saying to the Federal government that they will not run Federal elections under this kind of legislation.

There is no Constitutional requirement for the state and local election officials to run Federal elections. This has been a cooperative arrangement as a favor to the nation. But, when such irresponsible legislation such as HR811 is allowed to pass one body of Congress, it is time for the states to clearly indicate to the Federal government that they will not run elections under such ill considered rules.

Therefore, if Congress acts as a whole to pass the mandates contained in HR811, the Federal government should be forced to build its own election administration staff at the Federal level and run elections for Federal offices. Those offices are all members of the US House of Representatives (435), the US Senate (100) and President and Vice President (1 ballot position) for a total of 536 positions.

In comparison, state and local governments, through 8,000 election jurisdictions representing 87,000 separate governing units, handle the elections for 511,000 offices. To so radically alter American elections through the ill considered and irresponsible legislation as set to pass the House, leads us to recommend that states hand responsibility for those far less than 1% of elective positions back to the Federal government and let them run them on their own.

This is not a radical suggestion: virtually all established democracies world wide have a national administrative apparatus to run the national government's elections. It will simply be time for the US to follow suit if it insists on the provisions contained in the legislation as we are told will pass in the US House.

Specifically, these are some (but not all) of the concerns of election officials as contained in HR811:

- The provision that covers source code is giving a blueprint for malice in the elections process and Congress would be far better copying the language developed by Senator Feinstein in S1487 on access to source codes.

- Trying to implement any of this in time for the 2008 election is irresponsible: Presidential elections are the most complicated election to conduct and trying to purchase, implement and train on new systems before the 2008 election at this point is asking for potential disaster.
- The audit process in the bill is too burdensome and too complicated and will require billions to be spent by local jurisdictions in future elections. We believe there are better options available and can recommend steps to be taken which will serve elections better. Even if Congress doesn't want to handle the audit process in a manner more useful to election administration, they can copy the language of the Feinstein bill that simplifies the audit process to something more manageable – but even the Feinstein bill is still a higher percentage of auditing than is actually needed.
- The current version of the bill says that the voting system shall provide the voter with an opportunity to correct “any error made by the system...” If this is followed as written then no voter errors may be corrected only the errors “made by the system...” What some people can't seem to understand it is rare for the voting system to make an error – voters make errors not the voting system. This language is wrong as written. It should be: “The voting system shall provide the voter with an opportunity to correct any error made by the voter”.
- Page 3, Line 5-13: Appears to approve thermal reel-to-reel [technically language change is needed, this should be thermal and/or reel-to-reel] until 2012 but in 2012 there must be no way a VVAPT ballot can possibly be tracked back to a voter. Instead of referring to subclause (I) it needs to say “nothing in this act shall prohibit...” The language involves substantial redesign of America's electronic voting equipment. By the best estimates if Congress passed this bill in late 2007 or early 2008, it will be a minimum of 5 years to develop new electronic voting equipment to meet the requirements of the bill. Meaning that the earliest we could use such equipment is 2013 which effectively means 2014 is the first time they could be used in elections. Congress can verify that information by accessing the report of the Election Technology Council.
- Page 4, lines 6-13 changes the process for elections in much of America because it forces recounts by hand in the case of a recounted federal election: The normal process in much of America is that recounts are handled in stages:
 - Machine recount first and count by hand that which the voting equipment cannot read.
 - Recount of random precincts at a percentage of the votes cast in that precinct (such as 1% or 2%)
 - Hand recount of a larger percentage of the vote (than in line above)
 - Hand recount of all ballots
 - If candidate is still not convinced, then a contested election process is available.
 - The staged process allows the losing candidate to call off the recount at anytime he or she is satisfied with the outcome but doesn't force HAND recounting of all ballots from the very beginning.
 - Recounting by hand is less accurate than machine recounts – and that is why voting equipment was invented and is used in today's elections.
- Page 8, lines 11-18 eliminates the ability of the states to use a system like “Automark” to handle voters with special needs. It forces the elimination of these systems for states that have chosen Automark rather than DRE's.
- Page 13, lines 21-25 appears to force all jurisdictions in America to get rid of all “legacy” voting equipment; i.e., voting equipment that has been used for many years will now have to be made instantly obsolete because it has not gone through the national laboratory testing process. Current practice is to allow continued use of the equipment until the jurisdiction purchases new equipment and the new equipment then meets the standards and national testing.

- The legislation makes it almost impossible to continue either Early Voting and/or Vote Centers because it makes it impracticable due to the paper ballot requirements and emergency ballot requirements – with hundreds of “ballot styles” in jurisdictions, this becomes so complicated as to become unmanageable. This will change elections dramatically in more than 25 states who have some form of Early Voting.
- The legislation creates a “Private Right of Action” for any voter and this is likely to lead to abuses of the legal process to force counties to unnecessarily defend themselves from frivolous and marginal lawsuits. Page 48, lines 8-19. Really amusing is the line “violation is occurring or about to occur”. Who determines “about to occur”? Wouldn’t life be interesting for all if we could simply allege that a violation is about to occur on anything?
- The legislation gives the US Attorney General control of any complaint filed by any voter and virtually turns over the conduct of American elections to the federal government through the US Justice Department if and when a complaint – valid or not – is filed with the AG. Page 48, lines 8-25.
- The legislation is likely to lead to missing legal deadlines for determination of presidential electors in another close election and therefore is likely to lead to another national election being decided by the courts all due to the cumbersome audit process. While the language on Page 60 and lines 9-20 seems to indicate that the State is responsible for finishing the audits in time, it also requires the election officials to be clairvoyant to determine how much time is necessary to reach this objective.
- There is not enough funding in the bill to accomplish its objectives and will leave the state and local governments with a huge underfunded mandate which will cost billions of dollars at the state and local levels and will do so for all future elections.

These are only the highlights of what is wrong with the legislation. It is ill considered, it makes elections far too complicated, and it is likely to lead to elimination of useful and popular voting practices. Congress should send this bill back to Committee and rework it to become a responsible piece of legislation.

We embrace changes that will work to the advantage of all voters and, if given time, we can work with Congress to make the objectives of the legislation achievable. However, the specifics of HR 811 are so poorly developed that they cannot be fixed in a few simple floor amendments.